

NationsBank  
Commercial Loan Administration  
P. O. Box 105434, 19 Plaza  
Atlanta, GA 30348-5434

3-259A030

**NationsBank**

18398

SEP 16 1993 -3 05 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED  
OFFICE OF THE  
SECRETARY  
SEP 16 2 53 PM '93  
LICENSING BRANCH  
September 16, 1993

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, DC 20423

Attention: Ms. Mildred Lee, Room 2303

Re: Security Agreement by and between Georgia Northeastern Railroad Company, Inc. and NationsBank of Georgia, N.A.

Dear Ms. Lee:

Enclosed herewith are three (3) originally executed and notarized copies of a Security Agreement by and between the Georgia Northeastern Railroad Company, Inc., a Tennessee corporation as Debtor, and NationsBank of Georgia, N.A., (creditor). The Security Agreement is for a Promissory Note for one (1) GP-7 locomotive bearing the reporting marks of GNRR 2097.

The address of the parties are as follows:

Georgia Northeastern Railroad Company, Inc. *Debtor*  
1819 Peachtree Rd., N.E., Suite 303  
Atlanta, GA 30309

NationsBank of Georgia, N.A. *Commercial Loan Administration*  
Commercial Loan Administration  
Attention: Yvette Green  
P.O. Box 105434, 19 Plaza  
Atlanta, GA 30348-5434

I would appreciate the recording of the enclosed Security Agreements and returning two (2) copies to me. A check for the filing fee in the amount of \$16.00 is enclosed.

Thank you for your assistance.

Very truly yours,

*Yvette Green*  
Yvette Green

Loan Documentation Spec.

**Interstate Commerce Commission**  
Washington, D.C. 20423

9/17/93

OFFICE OF THE SECRETARY

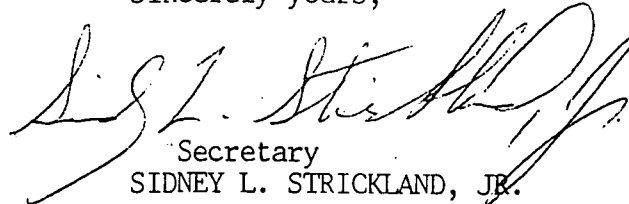
Yvette Green  
Nations Bank  
Commercial Loan Administration  
P.O.Box 105434, 19 Plaza  
Atlanta, GA. 30348-5434

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on **9/16/93** at **3:05pm**, and assigned  
recordation number(s).

**18398**

Sincerely yours,

  
Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

2/2/94

## Security Agreement

**FOR VALUE RECEIVED**, the undersigned (the "Debtor") hereby grants to **NationsBank of Georgia, N.A.**, (the "Bank") security title to and a security interest in the following property:

**COLLATERAL** (check appropriate boxes)

☐ All accounts receivable and contract rights, leases, chattel papers and instruments, and other rights of the Debtor to the payment of money, of every nature, type and description, whether now or hereafter existing, created or acquired, and all monies and other proceeds (cash or non-cash), including returned goods, including, without limitation, the following: **18398**

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(hereinafter collectively referred to as "Accounts"), and all proceeds of the Accounts; and

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☐ All goods, merchandise and other personal property of the Debtor held for lease or sale or being processed for lease or sale, or intended for display or demonstration, all raw materials, components, work in process, finished goods, packing and shipping materials, advertising materials and all other materials and supplies used or consumed in the Debtor's business, and all other inventory, whether now owned or hereafter existing or acquired by the Debtor of every nature, type and description, together with all additions and accessions thereto and all replacement parts and substitutions therefor, including, without limitation, the following:

(hereinafter collectively referred to as "Inventory"), and all proceeds and products of the Inventory; and

☐ All machinery, equipment, tools, motor vehicles, furniture, office supplies and fixtures, whether now owned or hereafter acquired by the Debtor and wherever located and used or acquired for use in the business of the Debtor, together with all additions and accessions thereto and all replacement parts and substitutions therefor, including, without limitation, the following property:

(hereinafter collectively referred to as "Equipment"), and all products and proceeds of the Equipment; and

☐ All patents, trademarks, tradenames, service marks, trade secrets, copyrights and exclusive licenses (including all pending patents, trademarks, tradenames, service marks and copyrights and all applications, materials, documents and other matter relating thereto), all inventions, and all manufacturing, engineering and production plans, blueprints, drawings, specifications, processes and systems, all computer programs, data bases, systems and software (including source and object codes), goodwill, choses-in-action, and all other general intangibles of every nature, type and description, whether now owned or hereafter acquired by the Debtor, including, without limitation, the following:

(hereinafter collectively referred to as "General Intangibles"), and all proceeds of the General Intangibles; and

☒ Atchison, Topeka & Santa Fe Railway model GP-7 locomotive that currently bears the reporting marks GNRR 2097.

(hereinafter collectively referred to as the "Goods"), and all proceeds of the Goods; and

All balances, credits and deposits of the Debtor now or hereafter with Bank together with any and all other property of the Debtor of every kind or description now or hereafter in the possession or control of Bank for any reason (hereinafter collectively referred to as "Balances") and all proceeds of the Balances.

(The Accounts, Goods, Inventory, Balances, General Intangibles and Equipment, or such as are checked above, including all proceeds of any of the foregoing, in whatever form, are hereinafter collectively referred to as the "Collateral.") Proceeds of the Collateral shall include without limitation any proceeds payable under or unearned premiums with respect to policies of insurance whether or not such policy shall contain an endorsement in favor of the Bank.

The security interest in the Collateral is given to secure: (1) Payment of a certain promissory note of:

☒ the Debtor

☐ \_\_\_\_\_ (the "Third Party Borrower") dated September 7, 19 93

, executed and delivered to the Bank in the principal sum of \$ \*\*55,500.00\*\*, payable as to principal and interest as therein provided, together with any and all renewals and extensions thereof and substitutions therefor, and all interest thereon; (2) future advances to be made by the Bank to the Debtor or Third Party Borrower at the Bank's option, which may or may not be evidenced by notes payable to the Bank, and all interest thereon; (3) all expenditures by the Bank for taxes, insurance, maintenance, and preservation of the Collateral and any other Collateral securing obligations of the Debtor or Third Party Borrower to the Bank, and all costs and expenses incurred by the Bank in the collection, workout or enforcement of any indebtedness of the Debtor or Third Party Borrower to the Bank and of this Agreement (including 15% of the principal and interest due under the Indebtedness as attorney's fees); and (4) all other liabilities of the Debtor or Third Party Borrower to the Bank now existing or hereinafter incurred, matured or unmatured, direct or indirect, absolute or contingent, joint or several, whether or not evidenced by a note or notes and whether originally owing to the Bank or acquired by the Bank from any third party, and any and all renewals and extensions thereof and substitutions therefor. (All of the indebtedness secured by this Agreement is hereinafter referred to as the "Indebtedness.")

**Effect of Recoveries Under Bankruptcy.** If the Debtor is not the maker of the note described above, and in the event any amount paid to the Bank on any Indebtedness is subsequently recovered from the Bank in or as a result of any bankruptcy, insolvency or fraudulent conveyance proceeding, the Debtor shall be liable to the Bank for the amounts so recovered up to the fair market value of the Collateral whether or not the Collateral has been released or the security interest terminated. In the event the Collateral has been released or the security interest terminated, the fair market value of the Collateral shall be determined, at the Bank's option, as of the date the Collateral was released, the security interest terminated, or said amounts were recovered.

**Use and Sale of Inventory.** Until Default (as defined herein), or until the Bank shall notify the Debtor of the revocation of such power or authority, the Debtor may have possession of the Inventory, and may in the ordinary course of its business at its own expense, sell, lease or furnish under contract any of the Inventory normally held by the Debtor for such purpose and use or consume, in the ordinary course of its business, any raw materials, work in progress or materials normally held by the Debtor for that purpose, in any lawful manner not inconsistent with the terms of this Agreement, any commitment letter or loan document and any policy of co-insurance on any of the Inventory. A sale of Inventory in the Debtor's ordinary course of business does not include an exchange or a transfer in partial or total satisfaction of a debt owing by Debtor.

**Use of Accounts.** Until otherwise directed by the Bank, the Debtor, at its own expense, will use its best efforts to endeavor to collect, as and when due, all amounts due with respect to any of the Accounts, including the taking of such action with respect to such collection as the Bank may request, or, in the absence of such request, as the Debtor may deem advisable; and, in the ordinary course of business may grant to any party obligated on any of the Accounts any rebate, refund or adjustment to which such party may be lawfully entitled; and, in connection therewith, may accept the return of goods, the sale or lease of which shall have given rise to such Accounts.

**Collection.** The Bank may, at any time, whether prior to or after Default hereunder, at the Debtor's expense, notify or direct the Debtor to notify (which notification Debtor agrees promptly to undertake) any parties obligated on any of the Accounts or General Intangibles to make payment to the Bank of any of the amounts due or to become due, thereunder, and the Bank may enforce collection of any of the Accounts or General Intangibles by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise, extend, or renew same for any period. All monies so received by the Bank, at the Bank's sole discretion, may be either (a) applied by the Bank directly toward payment of all or any part of the Indebtedness, whether or not then due, in such order of application as the Bank may determine; or (b) deposited to the credit of the Debtor with the Bank as security for payment of the Indebtedness and the Bank may, from time to time, in its sole discretion, (i) apply all or any part of the collected funds in said deposit account toward payment of all or any part of the Indebtedness, whether or not then due, in such order or application as the Bank may determine, or (ii) permit the Debtor to use all of any part of the funds on deposit in said account in the ordinary course of the Debtor's business.

Upon notice from the Bank, the Debtor will, forthwith upon receipt, transmit and deliver to the Bank, at the address indicated by the Bank, in the form received, all cash, checks, drafts, items, chattel paper and other instruments or writings for the payment of money (properly endorsed, where required, so that such items may be collected by the Bank) which may be received by the Debtor at any time in full or partial payment of the Accounts or General Intangibles or otherwise as proceeds of any of the Collateral. After notice from the Bank to remit such payments and proceeds, the Debtor will not commingle any such payments or proceeds with any other of its funds or property, but will hold them separate and apart from its own funds or property and upon express trust for the Bank until delivery is made to the Bank.

The Debtor hereby irrevocably makes, constitutes and appoints the Bank (and any of the Bank's officers, employees, attorneys or agents designated by the Bank) as Debtor's true and lawful attorney-in-fact with power: to sign the name of Debtor on any financing statement, continuation financing statement, security agreement, mortgage, assignment, certificate of title, affidavit, letter of authority, notice or other similar document which must be executed and/or filed in order to perfect or continue perfected the Bank's security interest in the Collateral; to endorse Debtor's name on any checks, notes, acceptances, money orders, drafts or other forms of payment or security that may come into the Bank's possession; to sign Debtor's name on any invoice or bill of lading relating to any Accounts, on drafts against customers, on schedules and assignments of Accounts, on verifications of Accounts, and on notices to account debtors; to send requests for verification of Accounts, and General Intangibles and to do all things necessary to enforce its security interest in the Collateral and to otherwise carry out this Agreement and after any Default to notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by the Bank and to receive, open and distribute all mail addressed to Debtor, retaining all mail relating to the Collateral and forwarding all other mail to Debtor. The Debtor ratifies and approves all acts of its attorney hereby appointed. Neither the Bank nor its officers, employees, agents or attorneys will be liable for any acts or omissions or any error of judgment or mistake of fact or law except for their gross negligence or willful misconduct. This power, being coupled with an interest, is irrevocable so long as any Account or General Intangible in which the Bank has a security interest remains unpaid and until the Indebtedness has been paid in full.

**Representations, Warranties and Covenants.**

The Debtor hereby represents, warrants and agrees that:

**Disbursement of Proceeds.** To the extent, if any, it shall have advised the Bank that any of the Collateral is being acquired with the proceeds of the Note, such proceeds may be disbursed by the Bank directly to the seller of such Collateral;

**Location of Business and Collateral.** The Debtor's principal place of business and chief executive office are located at the address shown below the Debtor's signature hereto, and all the Collateral (except any thereof which prior to the execution of this Agreement the Debtor shall have advised the Bank in writing will be kept at another location or consists of equipment normally used in more than one State) will be kept at said address shown below or at such other designated location, unless the Bank shall otherwise consent in writing.

**Change of Name, Residence or Place of Business.** The Debtor will not change its name, operate under any assumed name or change its residence, corporate structure or principal place of business without giving the Bank at least thirty (30) days prior written notice.

**Multistate Use of Collateral.** Debtor will immediately give written notice to the Bank of any use of any of the Collateral in any jurisdiction other than a State in which the Debtor shall have previously advised the Bank such Collateral will be used, and such Collateral will not, unless the Bank shall otherwise consent in writing, be used outside the territorial limits of the United States.

**Title and Encumbrances.** Debtor has, or forthwith will acquire, full title to the Collateral, and will at all times keep the collateral free of all liens and claims whatsoever, other than the security interest created hereunder and Debtor warrants that no financing statement covering any of the Collateral is on file in any public office.

**Perfection of Security Interests.** Debtor will from time to time, on request of the Bank, execute such financing statements, continuation statements, certificates of title, security agreements and other documents (and pay the cost of filing or recording the same in all public offices deemed necessary or appropriate by the Bank) and do such other acts and things, all as the Bank may from time to time request to establish and maintain a valid security title and interest in all of the Collateral (free of all other liens and claims whatsoever) to secure the payment of the Indebtedness, including, without limitation, deposit with the Bank of any certificate of title issuable with respect to any of the Collateral and notation thereon of the security interest hereunder.

**Maintenance of Collateral.** Debtor will at all times keep the Equipment and Inventory in first class order and repair, excepting any loss, damage or destruction which is fully covered by proceeds of insurance.

**Insurance.** Debtor will at all times keep the Collateral insured against loss, damage, theft and other risks, in such amounts, with such companies, under such policies and in such form, all as shall be satisfactory to the Bank, which policies shall contain standard lender's loss payable clauses in favor of the Bank under which all losses thereunder shall first be paid to the Bank as its interest may appear. The Debtor hereby assigns to the Bank any returned or unearned premium which may be due upon cancellation of any policies insuring the Collateral and directs the insurers to pay the Bank any amounts so due. The Bank, and any officer, employee or agent of the Bank, is hereby constituted and appointed as true and lawful attorney-in-fact of the Debtor to endorse any draft or check which may be payable to the Debtor in order to collect such insurance. The Bank may apply any proceeds of such insurance which may be received by it toward payment of the Indebtedness, whether or not due, in such order of application as the Bank may determine. If the Bank so requests, the original or true copies of such policies or certificates thereof shall be deposited with the Bank.

**Maintenance of Records.** Debtor will at all times keep at the address shown below the Debtor's signature hereto accurate and complete records reflecting the current status of the Collateral, permit the Bank or its agents and representatives to examine, copy and extract from the same and furnish to the Bank, on request, duly verified copies or summaries thereof in form and content satisfactory to the Bank. If requested by the Bank, Debtor will stamp all chattel paper hereby assigned in a form and manner acceptable to the Bank with an appropriate reference to the effect that the chattel paper has been assigned to Bank.

**Fixtures.** The Collateral, whether affixed to realty or not, shall remain personal property.

**Inspection of Collateral.** The Bank or its agents and representatives may examine and inspect the Collateral or any thereof, wherever located, at any reasonable time or times.

**Performance of Debtor's Obligation.** The Bank may from time to time, at its option, perform any agreement or obligation of the Debtor hereunder or under any other agreement by which the Debtor or any of the Collateral is bound which the Debtor shall fail to perform and take any other action which the Bank deems necessary for the maintenance or preservation of any of the Collateral or its interest therein and Debtor agrees forthwith to reimburse the Bank for all expenses incurred in connection with the foregoing, together with interest thereon at the rate of 18% per annum, or at the highest rate permitted by law, whichever is less, from the date incurred until the date of reimbursement.

**Taxes.** The Debtor will promptly pay when due any and all taxes, charges and assessments, including penalties and interest, which are or may become a lien on the Collateral or any part thereof, except to the extent that they may be contested in good faith and by appropriate proceedings.

**Compliance With State and Federal Laws.** The Debtor will comply with all State and Federal laws and regulations applicable to its business, whether now in effect or hereafter enacted including but not limited to the wage and hour laws and laws relating to the use or disposal of hazardous materials and wastes.

**Default.**

"Default" as used herein shall mean the occurrence of any of the following events.

- (a) Non-payment, when due, of any amount payable on any of the Indebtedness or failure of the Debtor to perform any agreement contained herein or in any other agreement with Bank;
- (b) any Obligor (which term, as used herein, shall mean the Debtor and each other party primarily or secondarily liable on any of the Indebtedness) becomes insolvent or unable to pay debts as they mature or files or has filed against it a Petition for Relief under any Chapter of the Bankruptcy Code or any successor federal bankruptcy law;
- (c) any statement, representation or warranty of any Obligor at any time made or deemed made by any Obligor to the Bank is untrue in any material respect as of the date made or deemed made or ceases to be true in any material respect thereafter;
- (d) entry of any judgment for the payment of money against any Obligor which, in the opinion of the Bank, is an amount material to the financial condition of the Obligor and is not adequately insured or indemnified against;
- (e) death of any Obligor who is a natural person, or death or withdrawal of any partner of any Obligor which is a partnership;
- (f) dissolution, merger or consolidation of any Obligor which is a corporation or partnership or transfer of a substantial part of the property of any Obligor;
- (g) sale, transfer or exchange, either directly or indirectly, of a controlling stock interest of any Obligor which is a corporation;
- (h) appointment of a receiver for any of the Collateral or for any property in which Debtor has an interest;
- (i) seizure of any Collateral;
- (j) any Obligor disavows or attempts to terminate its guaranty of all or part of the Indebtedness; or
- (k) the Bank reasonably believes that the prospect of repayment of the Indebtedness or performance by the Debtor or any Obligor of any obligation owed to Bank is impaired or should the Bank feel insecure for any other reason whatsoever.

Whenever a Default shall be existing, the Note and all other Indebtedness may (notwithstanding any provisions thereof), at the option of the Bank, and without demand or notice of any kind, be declared, and thereupon immediately shall become due and payable, and the Bank may exercise from time to time any rights and remedies available to it under applicable law. The Debtor agrees, in case of Default, except with written consent of Bank, to cease the sale, lease or furnishing under contract of service of any Inventory, to cease collection of the Accounts and to cease use or consumption thereof in business, and to assemble, at its expense, all the Collateral at a convenient place acceptable to the Bank and to pay all costs of the Bank of collection of the Note and all other Indebtedness, and enforcement of rights hereunder, including 15% of the principal and interest of the Indebtedness as attorneys' fees, and expense of any repairs to any realty or other property to which any of the Collateral may be affixed or be a part. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed at least five days before such disposition, postage prepaid, addressed to the Debtor either at the address shown below, or at any other address of the Debtor appearing on the records of the Bank. Any proceeds of any disposition of any of the Collateral may be applied by the Bank to the payment of expenses in connection with the Collateral, and any balance of such proceeds may be applied by the Bank toward the payment of such of the Indebtedness, and in such order of application, as the Bank may from time to time elect. Notwithstanding any of the foregoing, in connection with any retail installment contract pertaining to a consumer loan secured by a manufactured home, the Bank will take no action to repossess or foreclose or to accelerate payment of the Note or the Indebtedness until the Debtor has been accorded such notice and right to cure default as may be required by O.C.G.A. Sec. 7-4-3 or other applicable federal law or regulation.

No delay or failure on the part of the Bank in the exercise of any right or remedy nor any course of dealing between the Debtor and the Bank shall operate as a waiver thereof, and no single or partial exercise by the Bank of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by law or other agreement. Time is of the essence of this Agreement. If more than one party shall execute this Agreement, the term "Debtor" shall mean all parties signing this Agreement and each of them, and all such parties shall be jointly and severally obligated hereunder.

**Pronouns and Date.** The neuter pronoun, when used herein, shall include the masculine and feminine and also the plural. If this Agreement is not dated when executed by the Debtor, the Bank is authorized, without notice to the Debtor, to date this Agreement.

**Georgia Law.** This Agreement has been delivered in the State of Georgia and shall be construed in accordance with the laws of that State. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

**Assignees.** The rights and privileges of the Bank hereunder shall inure to the benefit of its successors and assigns.

**Waiver of Notice for Immediate Writ of Possession.** The Debtor hereby acknowledges that the Indebtedness arises out of a "commercial transaction" as that term is defined in O.C.G.A. Sec. 44-14-260(1) concerning foreclosure of mortgages on personalty, and agrees that if a Default has occurred and is continuing, the Bank shall have the right to an immediate writ of possession without notice of hearing, and the Debtor hereby knowingly and intelligently waives any and all rights it may have to any notice and posting of a bond prior to seizure by the Bank, its transferees, assigns or successors in interest of the Collateral or any portion thereof. The foregoing is intended by the Debtor as a "waiver" as that term is defined in O.C.G.A. Sec. 44-14-260(3) relating to foreclosure of mortgages on personalty.

**In Witness Whereof,** the Debtor has executed or caused this Agreement to be executed by its duly authorized representatives this 7th day of September, 19 93.

Georgia Northeastern Railroad Company, Inc

By: [Signature]  
Title: Vice President Finance and Asst. Secretary

[Signature]  
Notary Public  
Notary Public, Gwinnett County, Georgia  
My Commission Expires March 20, 1997

1819 Peachtree Road, Atlanta, Georgia 30309  
Suite 303 Address